IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

MONDAY, THE 13TH AUGUST 2007 / 22ND SRAVANA 1929

OP.No. 7912 of 2003(P)

PETITIONER:

P.NARAYANAN NAIR, AGED 63 YEARS, S/O.K.KHATHU NAIR, NELLIKKAT, BALLA (P.O), ANANDASHRAMAM (VIA), KASARGOD DISTRICT.

BY ADV. SRI.M.SASINDRAN
SRI.K.P.HARISH

RESPONDENTS:
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1. **CHIEF GENERAL MANAGER, (PERSONAL & HRD) STATE BANK OF INDIA, CENTRAL OFFICE, MUMBAI.**

2. **THE MANAGER, STATE BANK OF INDIA, KANHANGAD, KASARGOD DISTRICT.**

3. **THE CHIEF MANAGER, (PERSONAL & HRD), STATE BANK OF INDA, ZONAL OFFICE, ERNAKULAM.**

BY ADV. SRI.P.V.SURENDRANATH - R3

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 13/08/2007 , THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP. NO.7912/2003

ORDER ON CMP. NO.13812/2003 IN OP. NO.7912/2003

DISMISSED

13.08.2007 **SD/- V.GIRI, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE NOTIFICATION DT. 9.3.01.

EXT.P2:- COPY OF THE REPRESENTATION DT. 22.1.02.

EXT.P3:- COPY OF THE TELEGRAM INTIMATION.

EXT.P4:- COPY OF THE PROFORMA SIGNED BY THE PETITIONER.

EXT.P5:- COPY OF THE LETTER NO.PER 345 DT. 13.5.02.

/TRUE COPY/

P.S. TO JUDGE

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V.GIRI, J.

O.P.No.7912 of 2003 P

Dated this the 13th day of August, 2007.

JUDGMENT

The petitioner joined the services of the State Bank of India on 6.7.1989, pursuant to a regular mode of recruitment. He was confirmed in service on 6.1.1990 in the post of Armed Guard and he retired from service on 31.7.1999 on attaining the age of superannuation, 60 years.

2. As per the State Bank of India Employees' Pension Fund Rules (for short "**the Rules**"), as it stood on the date on which the petitioner retired from service, an employee, who enters service after 48 years, was not eligible for pension. By Ext.P1 notification dated 9.3.2001, the age for determining the eligibility was extended to 50 years and the amendment was given effect to from 22.5.1998, a date prior to the date of retirement of the petitioner. The petitioner claims that once he is considered as eligible to be admitted to the Pension Fund, then, he must be granted pension by treating the service rendered by him from 6.7.1989 upto 31.7.1999 (more than 10 years) as qualifying service, within the meaning of the Rules. Apparently, when his

option was originally sought for, he intimated his willingness, but later in Ext.P5, order construing the rules, the competent authority proceeded to hold that the petitioner did not render the requisite period of 10 years of service in the bank so as to make him eligible for pension.

3. The dispute in this regard essentially centers around whether the qualifying service for the purpose of pension should be computed from the date on which the incumbent joins service or from the date on which he is confirmed in service. In the instant case, the petitioner entered service on 6.7.1989 and was confirmed therein on 6.1.1990. If 10 years' period is computed with reference to the date of entry, then the petitioner had completed 10 years of service on 31.7.1999, the date on which he retired from service. If so, the petitioner's claim that he is eligible is to be accepted. But if on the other, the qualifying service commences only on the date on which the petitioner was confirmed in service viz., 6.1.1990, the petitioner is ineligible since the petitioner would not have completed the qualifying service on 31.7.1999, the date on which he retired from service.

4. In the counter affidavit filed on behalf of the 3rd respondent, it is contended that only those who are members of the State Bank of India Pension Fund Rules and who render the minimum qualifying service are eligible for pension. As per the Rules, every permanent employee is entitled to be admitted to the Fund. But he shall become a member of the Fund only from the date on which he is confirmed in the service of the bank. Under the Rules which prevailed prior to the amendment brought about by Ext.P1, persons who crossed the age of 48 years were not eligible for pension. If that be so, the petitioner could not have been included in the State Bank of India Employees Pension Fund. No doubt, the petitioner could have become a member on the strength of the amendment brought about under Ext.P1. But he became a member only with effect from the date of confirmation and computed with reference to the said date, he did not complete 10 years of service. Reference is made to Rule 7 of the Rules which maintains that an employee can be included in the Pension Fund "only from the date on which he is confirmed in the service of the bank".

5. In the light of the stand taken in the counter affidavit with reference to the Rules governing the situation, I find myself unable to accept the contention of the petitioner. May be the difference in the period is quite narrow in the present case. But when eligibility for pension is determined with reference to statutory provisions and the same does not admit of any relaxation, this court under Article 226 of the Constitution cannot direct the bank to relax the Rules or dilute the same.

As such, in the circumstances, I find no merit in the original petition and the same is dismissed, without any order as to costs.

Sd/-

(V.GIRI)

JUDGE

sk/

//true copy//

V.GIRI, J.

O.P.No.7912 of 2003

JUDGMENT

13TH AUGUST, 2007.